

**United States Department of Labor
Employees' Compensation Appeals Board**

H.C., Appellant

and

**U.S. POSTAL SERVICE, PLACENTIA POST
OFFICE, Placentia, CA, Employer**

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**Docket No. 21-0546
Issued: January 6, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 8, 2021 appellant filed a timely appeal from a September 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 20, 2017 appellant, then a 56-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her lower back due to factors of her federal employment. She explained that her lower back pain began after a July 2017 fall and, although

¹ 5 U.S.C. § 8101 *et seq.*

the pain initially came and went with pain medication, it had been persistent since September 2017. Appellant noted that she first became aware of her condition on July 17, 2017 and realized its relation to her federal employment on September 29, 2017. She did not stop work.

In duty status reports (Form CA-17) dated October 2 and 16, 2017, Dr. Basimah Khulusi, Board-certified in physical medicine and rehabilitation, diagnosed a lumbar disc displacement and advised that appellant could return to work with restrictions.

In a development letter dated November 9, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

In an October 3, 2017 diagnostic report, Dr. Jennifer Pedley, a Board-certified chiropractic radiologist, performed an x-ray scan of appellant's lumbar spine, finding mild-to-moderate degenerative disc disease from L2-L3 and L3 to L5-S1, mild-to-moderate facet arthrosis from L1-L2 to L5-S1, mild degenerative disc disease of the lower thoracic spine, osseous neural foramina stenosis at L2-L3, L4-L5 and L5-S1, a transitional segment at L5, mild bilateral sacroiliac arthrosis, hypolordosis of the lumbar spine and a shallow left convexity of the lumbar spine.

In an October 10, 2017 diagnostic report, Dr. Eric Chen, a Board-certified radiologist, noted a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, observing mild spinal canal stenosis at L3-L4 and L4-L5 as well as mild bilateral neuroforaminal stenosis at L2-L3.

Dr. Khulusi, in a November 13, 2017 Form CA-17, diagnosed a lumbar disc displacement and advised that appellant could return to work with restrictions.

In a November 17, 2017 response to OWCP's development questionnaire, appellant related her work duties of pushing a cart, loading and unloading parcels from her vehicle and delivering parcels weighing approximately 15 pounds to her lower back injury. She asserted that she did not have any other activities aside from her federal employment that contributed to her condition.

In a November 21, 2017 narrative medical report, Dr. Khulusi reviewed appellant's employment duties consisting of casing, lifting, and pulling down and sorting mail, as well as walking approximately five miles per day in order to deliver the mail. She related that delivering the mail involved appellant making multiple trips to her long-life vehicle (LLV) while carrying a tub weighing approximately 15 pounds. While delivering mail, appellant was required to frequently twist, pivot, bend, reach, pull, and twist. Additionally, Dr. Khulusi related that appellant stepped in and out of her vehicle approximately 80 times per day. Appellant also reported that she fell at work on July 17, 2017 when she was descending the stairs at the post office. She did not report her fall at that time because her back pain was mild. Dr. Khulusi further related that appellant continued to experience intermittent back pain since her July 17, 2017 fall until she fell again on September 26, 2017 after she missed a step while exiting her LLV. Since then, her low back pain had become more severe. On examination and review of diagnostic studies Dr. Khulusi diagnosed a lumbar sprain, lumbar disc displacement and spinal stenosis. She opined that appellant's July 17, 2017 fall caused her to sprain her back when her muscles went into a sudden contraction to protect her from suffering severe damage as a result of her fall. Following her fall, appellant continued to perform repetitive activities on the job. Dr. Khulusi explained that reaching

into a hamper and into the back of an LLV put appellant's back at a mechanical disadvantage because the center of gravity of the mail she was handling was far away from her own center of gravity. She indicated that this increased the load on appellant's lumbar spine area and aggravated the spraining and pressure on her lumbar discs. Dr. Khulusi opined that, when she fell again in September, the muscles of her lower back contracted suddenly to minimize her injury; however, this ended up placing more excessive pressure on the disc spaces in her lumbar spine area, which contributed to her disc displacement. She further explained that the displacement of the discs ended up crowding the space in the spinal canal and the neural foramina.

By decision dated January 24, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical condition was causally related to the accepted factors of her federal employment.

On March 9, 2018 appellant requested reconsideration of OWCP's January 24, 2018 decision.

In support thereof, appellant submitted CA-17 forms dated January 9 and February 27, 2018, wherein Dr. Khulusi diagnosed a lumbar disc displacement and advised that appellant could return to work with restrictions.

In a March 1, 2018 medical narrative, Dr. Khulusi recounted the events of appellant's September 26, 2017 fall, reiterating that the muscles of her whole body contracted suddenly to minimize her injury and ended up sustaining a lumbar sprain as a result. She also reasoned that the excessive pressures that were exerted on her lumbar disc spaces contributed to the displacement of the discs in her lumbar area. Dr. Khulusi opined that appellant actually suffered a traumatic injury on September 26, 2017 when she fell. She indicated that the traumatic fall in July 2017 aggravated appellant's pathology somewhat, causing intermittent low back pain only, clarifying that her subsequent fall on September 26, 2017 ended up aggravating her pathology to a more significant extent, causing her back pain to become permanent. Dr. Khulusi concluded that the September 26, 2017 fall caused a more serious low back sprain that ended up causing more disc displacement, which in turn caused spinal stenosis and more crowding of her lumbar nerve roots. She diagnosed a lumbar sprain, lumbar disc displacement as a result of the sprain and mild spinal stenosis as a result of her lumbar disc displacement. Dr. Khulusi also requested that appellant's claim be converted from an occupational disease claim to a traumatic injury claim.

In an April 10, 2018 Form CA-17, Dr. Khulusi diagnosed a lumbar disc displacement and advised that appellant could return to work with restrictions.

By decision dated April 16, 2018, OWCP denied modification of its January 24, 2018 decision.

On July 3, 2018 appellant requested reconsideration of OWCP's April 16, 2018 decision. She attached a June 21, 2018 narrative medical report in which Dr. Khulusi indicated that in a separate Form CA-2 dated October 19, 2017, appellant clearly explained that her injury occurred when she slipped on the edge of a step and subsequently felt pain in her lower back that did not go away. Dr. Khulusi noted that appellant also indicated that the date she first became aware of her injury was September 26, 2017. Appellant informed Dr. Khulusi that the employing establishment

made her fill out the previous October 20, 2017 Form CA-2 and changed her answers to indicate the date she first became aware was July 17, 2017 and that her injury was caused by this fall. She opined that appellant was counseled wrongly by her supervisor and ended up changing her claim form and her reports about her injury. Dr. Khulusi asserted that this was proof that appellant sustained a traumatic injury due to a September 26, 2017 employment incident.

By decision dated July 16, 2018, OWCP denied appellant's request for reconsideration, finding that her newly submitted evidence did not contain a relevant legal argument not previously considered by OWCP.

On April 15, 2019 appellant again requested reconsideration of OWCP's April 16, 2018 decision and submitted additional evidence.

In a December 8, 2017 diagnostic report, Dr. Maliheh Massih, Board-certified in electrodiagnostic medicine, performed a nerve conduction velocity/electromyography (NCV/EMG) test of appellant's lower extremities, returning an abnormal study that was suggestive of highly probable mild right-sided L3-4 subacute lumbosacral radiculopathy.

In a February 21, 2019 narrative report, Dr. Khulusi explained that appellant's July 17, 2017 fall caused her to experience intermittent low back pain and that the repetitive activities of her employment caused her pain to become constant, starting in September 2017. She again explained that her initial fall caused her to sprain her lower back when her muscles suddenly contracted to protect her from suffering severe damage. Following the July 17, 2017 fall, appellant's repetitive activities kept making her back condition worse, reasoning that she kept suffering repetitive spraining and straining of the soft tissue structures of her lower back to different degrees. Dr. Khulusi specifically referenced the repetitive activities of reaching into a hamper and into the back of her LLV, explaining that her back was placed at a mechanical disadvantage because the center of gravity of the items she was handling was far away from her own center of gravity. This activity increased the loading stress on her lumbar spine area by many multiples. The repetitive spraining and straining continued to occur, resulting in a cumulative trauma disorder, causing more damage to the structures of appellant's lower back. Dr. Khulusi diagnosed a lumbar sprain, lumbar disc displacement as a result of her sprain and mild spinal stenosis as a result of her lumbar disc displacement.

By decision dated June 21, 2019, OWCP denied modification of its April 16, 2018 decision.

OWCP continued to receive evidence. In a February 17, 2020 progress report, Dr. Khulusi again evaluated appellant for her lumbar conditions. She diagnosed a lumbar sprain, lumbar disc displacement as a result of her sprain and mild spinal stenosis as a result of her lumbar disc displacement and indicated that she could return to work with modified duties.

On June 10, 2020 appellant, through her then-representative, requested reconsideration of OWCP's June 21, 2019 decision. In an attached memorandum of even date, her representative again noted that she was advised to submit a Form CA-2 by her supervisor after her July 2017 fall. She argued that, despite a fall normally being considered a traumatic injury, OWCP did not ask for clarification in its November 9, 2017 development letter.

By decision dated September 4, 2020, OWCP denied modification of its June 21, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,² that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.⁷ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁸

ANALYSIS

The Board finds that this case is not in posture for decision.

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁸ *Id.*; *Victor J. Woodhams*, *supra* note 5.

In her October 20, 2017 Form CA-2 and November 17, 2017 response to OWCP's questionnaire, appellant consistently related that her symptoms began following a July 17, 2017 fall and continually worsened as she performed her employment duties consisting of pushing a cart, loading and unloading parcels from her vehicle and delivering parcels weighing approximately 15 pounds.

In support of her claim, appellant submitted multiple narrative medical reports in which Dr. Khulusi reviewed her employment activities as well as her July 17 and September 26, 2017 falls at work. On evaluation and review of diagnostic studies she explained that appellant's first fall on July 17, 2017 caused her to sprain her back and experience intermittent low back pain as the muscles in her lower back area suddenly contracted to prevent severe harm as she fell. Dr. Khulusi opined that the frequent twisting, pivoting, bending, reaching, pulling, and twisting involved in her employment duties increased the loading stress on her lumbar spine area by many multiples, resulting in a cumulative trauma disorder precipitated by the repetitive spraining and straining of the structures of her lower back. Specifically, she referenced the mechanical disadvantage appellant's lower back was placed in when she regularly reached into a hamper or the back of her LLV to lift parcels weighing approximately 15 pounds. Dr. Khulusi further opined that her condition worsened following the September 26, 2017 fall, finding that the subsequent fall caused a more serious low back sprain. She explained that this sprain ended up causing more disc displacement, which in turn caused spinal stenosis and more crowding of appellant's lumbar nerve roots. Dr. Khulusi diagnosed a lumbar sprain, lumbar disc displacement as a result of her sprain and mild spinal stenosis as a result of her lumbar disc displacement.

The Board finds that, although Dr. Khulusi's medical opinions are not fully rationalized, they constitute relevant evidence in support of appellant's claim, as they provide an explanation of the physiological process by which her accepted factors of federal employment caused or aggravated her diagnosed lumbar conditions. As Dr. Khulusi's narrative medical reports raise an uncontroverted inference of causal relationship between her claimed lumbar conditions and the accepted factors of her federal employment, further development of appellant's claim is therefore required.⁹

On remand OWCP shall prepare a statement of accepted facts setting forth the employment factors which have been established and refer appellant to a second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether her accepted employment factors either caused or aggravated her lumbar conditions.¹⁰ If the second opinion disagrees with the explanations provided by Dr. Khulusi, he or she must provide a fully-rationalized explanation explaining why their opinions are unsupported. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

⁹ See *A.T.*, Docket No. 19-1972 (issued June 25, 2020); *K.T.*, Docket No 19-1436 (issued February 21, 2020); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 6, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board